

2002 SEP 13 PM 2:36

1. This is a civil action for recovery of response costs brought pursuant to Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, ("CERCLA"), 42 U.S.C. § 9607. The United States seeks to recover costs incurred in response to the release or threatened release of hazardous substances at or from the Ohio Drum Superfund Site, located at 3967 West Pearl Road, Cleveland, Ohio (the "Site"). The United States also seeks civil penalties pursuant to Section 106(b) of CERCLA for Defendants' violation

of an administrative order issued by EPA on April 21, 1999 pursuant to its statutory authority under Section 106(a) of CERCLA ("administrative order"). In addition, pursuant to Section 107(c)(3), the United States seeks punitive damages in an amount up to three times the amount of costs incurred by the United States as a result of Defendants' violation of the administrative order. Finally, pursuant to Section 113(g)(2) of CERCLA, 42 U.S.C. § 9613(g)(2), the United States seeks a declaratory judgment that Defendants are jointly and severally liable for all future response costs that are incurred by the United States in connection with the Site.

JURISDICTION AND VENUE

2. This Court has jurisdiction over the subject matter of this action pursuant to Section 113(b) of CERCLA, 42 U.S.C. § 9613(b), and 28 U.S.C. §§ 1331 and 1345.

3. Venue is proper in this district pursuant to Section 113(b) of CERCLA, 42 U.S.C. § 9613(b), and 28 U.S.C. § 1391(b) and (c), because the claims arose and the threatened or actual releases of hazardous substances occurred in this district.

DEFENDANTS

4. Defendant Lomack Drum Company ("Lomack Drum") is a corporation organized and existing under the laws of Ohio. Lomack Drum Company is a "person" within the meaning of Section 101(21) of CERCLA, 42 U.S.C. §9601(21). Lomack Drum Company was an operator of a facility at the Site at a time when hazardous substances were disposed of there, within the meaning of Section 107(a)(2) of CERCLA, 42 U.S.C. § 9607(a)(2).

5. Defendant Truco, Inc. ("Truco") is a corporation organized and existing under the laws of Ohio. Truco is a "person" within the meaning of Section 101(21) of CERCLA, 42 U.S.C. §9601(21). Truco arranged for the disposal of hazardous substances owned or possessed

by it at the Site, within the meaning of Section 107(a)(3) of CERCLA, 42 U.S.C. § 9607(a)(3).

THE OHIO DRUM SITE

6. The Site is located in Cleveland, Ohio. From 1960 to 1981, David Tvert and Elmer Freiberg operated the Ohio Drum Reconditioning Company ("Ohio Drum") on the Site. In 1981, Defendant Lomack Drum acquired the assets of Ohio Drum. Defendant Lomack Drum leased the property from Freiberg and Tvert and operated a drum reconditioning business on the Site from 1981 until a fire destroyed the buildings in 1984. The Site has been abandoned since that time.

7. EPA's analysis of soils and sediment from the Site indicated the presence of hazardous substances, including, but not limited to, lead, mercury, PCBs, and chromium.

8. Residential properties and a playground lie along a hillside to the east of the Site. An estimated 1,500 people live and 300 people work within 1,000 feet of the Site.

9. During the period when Lomack Drum operated on the Site, the company received used drums from various sources. Lomack Drum washed and rinsed the used drums to remove residue of the various substances that had been stored in the drums. Some of the residues in the drums washed and rinsed by Lomack Drum were hazardous substances. In addition, Lomack Drum sandblasted the used drums in order to remove paint, at least some of which contained lead, a hazardous substance.

10. As part of its business, Defendant Truco used drums of materials which contained hazardous substances. After using the materials contained in the drums, Defendant Truco arranged to send the drums to Ohio Drum or Lomack Drum for reconditioning. The drums that Defendant Truco arranged to recondition contained some residual materials that Defendant did

not use or was unable to use. By arranging for reconditioning of the drums, Defendant Truco also arranged for treatment or disposal of the residual materials remaining in the drums.

11. At least some of the drums that Defendant Truco arranged for reconditioning, described in Paragraph 10, above, were painted with lead-based paint. As part of the reconditioning process, Ohio Drum and Lomack Drum sandblasted the used drums sent to the Site in order to remove paint from the drums. By arranging for reconditioning of the drums, Defendant Truco also arranged for treatment or disposal of the lead-based paint on the drums.

12. On April 21, 1999, U.S. EPA issued an administrative order, pursuant to Section 106 of CERCLA, 42 U.S.C. §9606, to the Defendants and other potentially responsible parties, directing them to respond to a release of hazardous substances at the Site. The Defendants failed to comply with the administrative order.

13. EPA has incurred response costs to mitigate the releases or threats of releases of hazardous substances at the Site pursuant to Section 104 of CERCLA, 42 U.S.C. §§ 9604.

FIRST CLAIM FOR RELIEF
(Liability for Past and Future Response Costs)

14. Paragraphs 1 through 13 are realleged and incorporated herein by reference.

15. Section 107(a) of CERCLA, 42 U.S.C. § 9607(a) provides, in pertinent part:

Notwithstanding any other provision or rule of law, and subject only to the defenses set forth in subsection (b) of this section . . .

- (2) any person who at the time of disposal of any hazardous substance owned or operated any facility at which such hazardous substances were disposed of,
- (3) any person who by contract, agreement, or otherwise arranged for disposal or treatment, or arranged with a transporter for transport for disposal or treatment, of hazardous substances owned or possessed by such person, by

any other party or entity, at any facility or incineration vessel owned or operated by another party or entity and containing such hazardous substances . . .

from which there is a release, or a threatened release which causes the incurrence of response costs, of a hazardous substance, shall be liable for –

- (A) all costs of removal or remedial action incurred by the United States Government . . . not inconsistent with the national contingency plan. . . .

The amounts recoverable in an action under this section shall include interest on the amounts recoverable under subparagraphs (A) through (D). Such interest shall accrue from the later of (i) the date payment of a specified amount is demanded in writing, or (ii) the date of the expenditure concerned.

16. Section 113(g)(2)(B) of CERCLA, 42 U.S.C. § 9613(g)(2)(B), provides in pertinent part:

In any such action described in this subsection, the court shall enter a declaratory judgment on liability for response costs or damages that will be binding on any subsequent action or actions to recover further response costs or damages.

17. There have been "releases" or the threat of "releases" of "hazardous substances," including without limitation, lead, mercury, PCBs, and chromium, into the environment at the Ohio Drum Site, within the meaning of Sections 101(22) and 101(14) of CERCLA, 42 U.S.C. § 9601(22), (14).

18. As a result of releases or threatened releases of hazardous substances at the Site, the United States has undertaken "response" actions within the meaning of CERCLA Section 101(25), 42 U.S.C. § 9601(25), and the United States has incurred response costs in connection with such response actions.

19. The Site is, and was at all times relevant to this complaint, a "facility" within the

meaning and scope of Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

20. "Disposal" of "hazardous substances" within the meaning and scope of Sections 101(29) and (14) of CERCLA, 42 U.S.C. §§ 9601(29), (14), including lead, mercury, PCBs, and chromium, occurred at the Site during Lomack Drum's operation of its drum reconditioning business at the Site.

21. As of April 30, 2002, the United States had expended at least \$605,372.57 in response costs in connection with the Site.

22. On July 29, 2002, U.S. EPA issued a letter to Defendants demanding payment of U.S. EPA's unreimbursed response costs at the Site. The demand initiated the accrual of prejudgment interest on those costs pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a).

23. The response actions taken and the costs incurred by the United States in connection with the Site are not inconsistent with the National Contingency Plan ("NCP"), which was promulgated under CERCLA Section 105(a), 42 U.S.C. § 9605(a), and codified at 40 C.F.R. Part 300.

24. Pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), Defendants are jointly and severally liable to the United States for response costs incurred by the United States in connection with the Site, including enforcement costs, and for interest thereon accruing from at least July 29, 2002.

25. Pursuant to Section 113(g)(2) of CERCLA, 42 U.S.C. § 9613(g)(2), the United States is entitled to a declaratory judgment that Defendants are jointly and severally liable for such further response costs as the United States may incur in connection with the Site.

SECOND CLAIM FOR RELIEF
(Liability for Civil Penalties)

26. Paragraphs 1 through 25 are realleged and incorporated herein by reference.

27. CERCLA Section 106(a), 42 U.S.C. § 9606(a), provides that the President may direct the Attorney General of the United States to secure such relief as may be necessary to abate a condition that may be an imminent and substantial endangerment to the public health or welfare or the environment because of an actual or threatened release of a hazardous substance from a facility. Section 106 further provides that the President may take other action under Section 106, including issuing such orders as may be necessary to protect public health and welfare and the environment.

28. On April 21, 1999, EPA, based on its administrative record, issued an administrative order, pursuant to CERCLA Section 106(a), 42 U.S.C. § 9606(a), requiring Defendants, and others, to undertake specified removal action activities at the Site.

29. In its administrative order, EPA made findings of fact, including that hazardous substances present at the Site include lead, mercury, PCBs, cadmium, and chromium, and that the release and threat of release of one or more hazardous substances at or from the Site may present an imminent and substantial endangerment to the public health, welfare, or the environment within the meaning of Section 106(a) of CERCLA, 42 U.S.C. § 9606(a).

30. Pursuant to Section 106(b)(1) of CERCLA, 42 U.S.C. § 9606(b)(1), as amended, any person who, without sufficient cause, willfully violates or fails or refuses to comply with, any order of the President under Section 106(a) of CERCLA, 42 U.S.C. § 9606(a), may, in an action brought in the appropriate United States district court to enforce such order, be fined not

more than \$27,500 per day.

31. Defendants failed, without sufficient cause, to comply with the April 21, 1999, administrative order from May 1, 1999 to June 21, 1999. Therefore, Defendants are liable for a civil penalty for each day of violation of EPA's administrative order of up to \$27,500 per day.

THIRD CLAIM FOR RELIEF
(Liability for Treble Damages)

32. Paragraphs 1 through 30 are realleged and incorporated herein by reference.

33. Section 107(c)(3) of CERCLA, 42 U.S.C. § 9607(c)(3) provides, in pertinent part:

If any person who is liable for a release or threat of release of a hazardous substance fails without sufficient cause to properly provide removal or remedial action upon order of the President pursuant to section 9604 or 9606 of this title, such person may be liable to the United States for punitive damages in an amount equal to, and not more than three times, the amount of any costs incurred by the Fund as a result of such failure to take proper action.

34. Defendants failed, without sufficient cause, to undertake the removal action that was the subject of the April 21, 1999, administrative order.

35. The Fund incurred costs as a result of Defendants' failure to perform pursuant to the April 21, 1999, administrative order.

36. Defendants are liable for punitive damages in an amount equal to and not more than three times the amount of such costs.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, the United States of America, respectfully requests that the Court:

1. Order Defendants, jointly and severally, to reimburse the United States for

response costs incurred as a result of response actions taken at the Site;

2. Enter a declaratory judgment that Defendants are jointly and severally liable for future response costs incurred by the United States in connection with the Site;

3. Assess a civil penalty against Defendants of not more than \$27,500 per day of violation for failure to comply with the administrative order;

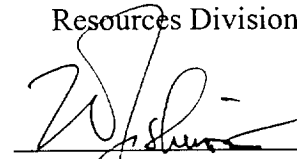
4. Enter a judgment declaring that Defendants are and shall be jointly and severally liable to the United States for punitive damages in an amount up to three times the amount of any costs incurred by the United States as a result of the Defendants' failure to comply with the administrative order;

5. Award the United States its costs in this Award the United States its costs in this action; and

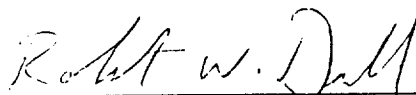
6. Award any further relief as the Court deems just and proper.

Respectfully submitted,

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